

PATENT
App. Ser. No.: 09/903,350
Atty. Dkt. No. ROC920010125US1
PS Ref. No.: IBMK10125

REMARKS

This is intended as a full and complete response to the Office Action dated October 5, 2005, having a shortened statutory period for response set to expire on January 5, 2005. Please reconsider the claims pending in the application for reasons discussed below.

Claims 3, 7-11, 24, 27, 33 and 44 are pending in the application and remain pending following entry of this response. Claims 33 and 44 have been amended. Applicants submit that the amendments do not introduce new matter or require further consideration.

Claim Rejections - 35 U.S.C. § 101

Claim 44 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicants have amended claim 44, whereby the rejection is believed to be obviated. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejections - 35 U.S.C. § 102

Claims 3, 7-11, 24, 27, 33 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by *Berezowski et al.* (US 20020056087 A1, hereinafter “*Berezowski*”). Applicants respectfully traverse this rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

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In this case, *Berezowski* does not disclose "each and every element as set forth in the claim".

With respect to amended claim 3, the claim describes transmitting data representing a growth rate of viewers for a particular program. Examiner states that *Berezowski* discloses transmitting data representing a growth rate of viewers for a particular program at paragraphs 0054-0056, 0072-0073 and Figures 5-6. The cited portions of *Berezowski* do not describe transmitting data representing a growth rate of viewers for a particular program.

First, paragraphs 0054-0056, 0072 are entirely irrelevant as these paragraphs are directed to the hardware for providing users with audience information and the manner and format of providing users with the audience information. Figures 5-6 show a presentation of audience information, which is described in paragraph 0073. However, paragraph 0073 describes that "audience information may provide the user with ratings, the audience size for a particular program, the market share of a particular program, or any other suitable information related to the audience of a program or other media". The cited paragraph does not describe transmitting data representing a growth rate of viewers for a particular program.

Nevertheless, the Examiner states that "audience size equates to "growth rate" because it represents a number of users or how many users are watching the particular program". (Pages 3-4 of Examiner's Action.) **Respectfully, Applicants point out that an "audience size" is not the same a growth rate.** An "audience size" is a value indicative of the number of viewers. For example, Figure 6 of *Berezowski* shows a pie graph indicating a portion of the viewers currently watching "Mad About You". A growth rate is a value indicative of a change in a number of viewers. By definition, therefore, the portions of *Berezowski* cited by the Examiner do not disclose a **viewership growth rate**, or any other kind of rate. Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 7, the claim describes transmitting group information identifying group members of the defined group. Examiner states that *Berezowski* discloses providing group information comprising group members of the

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defined group in Figure 16 and the corresponding text in paragraph 0089. The cited figure is in fact directed to displaying the number of viewers in the defined zip code watching or recording a program. Thus, as an initial matter, *Berezowski* does not teach "a defined group of the plurality of end-user receivers". The viewers in a zip code do not make up a defined group of end-user receivers. In fact, quite the opposite, defining viewership on the basis of a geographic location necessarily means the particular end-user receivers are undefined since end-user receivers may be removed from and/or added to the defined region and thus define a variable, not a constant. The difference may be illustrated with an example. Consider "a defined group of the plurality of end-user receivers" comprising end-user receivers A, B, and C. The end-user receivers may be in the same zip code or in different zip codes. Where the end-user receivers are located is irrelevant to the definition of the group, as claimed. Thus, the group is not defined by geographic region (zip code), but by the particular end-user receivers themselves. It follows that the particular viewers or end-user receivers themselves in the zip code are not identified in the figure; rather, only a number of viewers is shown. Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

Applicants note that the foregoing argument was presented to the Examiner in Applicants' previous response. However, the Examiner provided no indication as to whether the Applicants' argument was considered and, if so, why the argument was unpersuasive. As a result, Applicants' ability to provide additional clarification is substantially limited. If the Examiner maintains the argument is unpersuasive, Applicants respectfully request the Examiner to provide a basis for his position.

With respect to dependent claims 8-11, each of the claims depends from claim 7. Accordingly, the rejection with respect to dependent claims 8-11 is believed to be overcome for the reasons stated above. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 24, the claim describes viewership indicators which indicate a viewership growth rate in at least one program being transmitted in a video signal. Examiner states that *Berezowski* teaches that the processor is configured

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to format an on-screen guide interface with viewership indicators using the viewership data, wherein the viewership indicators indicate a viewership growth rate in at least one program being transmitted in the video signal in Figures 5-6, Items 550 and 605, and paragraphs 0054-56 and 0072-73. As noted above, an "audience size" is not the same as "a growth rate". By definition, therefore, the portions of *Berezowski* cited by the Examiner do not disclose a **viewership growth rate**, or any other kind of rate. Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 27, the claim describes on-screen guide formatting information which comprises a growth rate of viewers for a particular program. Examiner cites Figures 5-6 and paragraphs 0054-56 and 0072-73 as disclosing transmitting data representing a growth rate of viewers for a particular program. Applicants respectfully submit that the rejection is overcome for the reasons provided above with respect to claim 3. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 33, the claim describes a processor further configured to determine whether a particular program is significant based on at least one of a size and a growth rate of a current viewing audience, and for each significant program, transmit alert information to a plurality of end-user receivers. Examiner states that *Berezowski* teaches a processor further configured to determine whether a particular program is significant based on at least one of a size a current viewing audience, and for each significant program, provide alert information to the plurality of end-user receivers at Figures 5-6, and in paragraphs 0073-0074. Examiner states "when user clicks on icon 550, a pie chart 605 is displayed to show how many users currently watching "Mad about you". The cited Figure and paragraphs are directed to a pie chart displayed in response to a user request. Accordingly, the cited Figure and paragraphs do not describe a processor configured to determine whether a particular program is significant based on at least one of a size and a growth rate of a current viewing audience, and for each significant program, transmit alert information to a plurality of end-user receivers. In other words, the claim requires processing to identify

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significant programs and, for each significant program, to then transmit an alert. In contrast, *Berezowski* displays information in response to an explicit user request – no determination significant programs is performed. Withdrawal of the rejection is respectfully requested.

With respect to amended claim 44, the claim describes viewership information comprising group information indicating which members of a group are watching a program. Examiner states that *Berezowski* shows viewership information comprising group information indicating which members of a group are watching a program at paragraphs 0089 and 0091. The cited section is in fact directed to providing a user with access to the user's profile. See *id.* The system may use a user's log-in information to retrieve the user's information. *Id.*

The cited section also states that the interactive application may compare the user to other users with similar demographics. *Id.* The cited section states "in some embodiments, the user may be enabled to select national data (e.g., all users across the nation), regional data (e.g., all users in a user's geographical region), or market data (e.g., all users in a specific market/metro area). When the user compares the user to other users with similar demographics, the user is provided with information indicating a percentage of users watching or recording a program. See Figures 12-17. However, the cited section and figures do not describe viewership information comprising group information indicating which specific members of a group are watching a program.

Accordingly, *Berezowski* does not teach all the claim limitations of the pending claim. Withdrawal of the rejection is respectfully requested.

Applicants note that the foregoing argument (with respect to claim 44) was presented to the Examiner in Applicants' previous response. However, the Examiner provided no indication as to whether the Applicants' argument was considered and, if so, why the argument was unpersuasive. As a result, Applicants' ability to provide additional clarification is substantially limited. If the Examiner maintains the argument is unpersuasive, Applicants respectfully request the Examiner to provide a basis for his position.

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Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Conclusion

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the office action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this office action.

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,

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